

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Creation of a Low)
Power Radio Service)

MM Docket No. 99-25

RM-9208

RM-9242

TO: The Commission

COMMENTS

WGUL-FM, Inc.¹ and American Association of Independent Radio Stations (AAIRS)² (jointly "Petitioners,") by their attorneys, hereby offer their Comments in response to the Notice of Proposed Rule Making ("Notice"), released February 3, 1999.

The Notice acknowledges that the entire concept of low power FM (LPFM) radio stations is premised upon the elimination of present third adjacent and second adjacent channel protections. It also states that no action implementing LPFM will be taken if it would interfere with the development of terrestrial digital radio services, such as the

¹ WGUL-FM, Inc., is the licensee of WGUL-AM, Dunedin, Florida, WGUL-FM, Beverly Hills, Florida, WINV, Inverness, Florida, WRFB, Cocoa, Florida, and WXOF, Yankeetown, Florida. It has an application pending to acquire WKXY, Sarasota, Florida.

² AAIRS is an organization in formation to consist of local independent radio stations, including small group owners. Carl J. Marcocci, CEO of WGUL-FM, Inc., is the founder and acting president.

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proposed in band on channel (IBOC) service. Having said this, however, the Commission proceeds as if these issues had already been resolved in favor of the LPFM service. In short, these matters appear to have been pre-judged.³

The creation, or possible creation, of a low power radio service should await prior resolution of these spectrum issues, and, quite possibly, gaining some experience as to the effect of elimination of third adjacent and second adjacent channel protection requirements. Experimental grants could be given to certain stations in order to test the amount of interference, both to mobile and to stationary FM receivers.

If testing demonstrates that these adjacent channel protections are no longer necessary, the first opportunities to take advantage of the relaxation should be given to existing licensees, particularly to permit upgrading for Class A stations and those that are presently short spaced, or which have no present hope of reaching maximum facilities because of height restrictions at existing locations. These are parties with a demonstrated record of providing service for their communities. Perhaps, after an appropriate opportunity for such upgrades or improvements, the issue of a low power service could be resurrected.

One of the asserted goals of a low power radio service is to provide service to rural areas. However, no mention is made of the presently expanding Table of Allotments. In the last year alone, nearly 100 new allotments were made. The vast majority of these were for first services, and the list of communities provides a portrait of

³ The Statement of Commissioner Susan Ness properly identifies three issues, but they are in reverse order. The first issue should be determining interference levels, and the third should be whether this service should be open at all, commercial or noncommercial.

rural America. Nor does there appear to be any end to this expansion. In the month of June, 1999, there were Notices of Proposed Rule Making for 30 additional FM allotments, again primarily for first service to small communities.

Of course, none of the allotments made in recent years have resulted in actual service since there has been a freeze on new applications. At some point, however, there will be a flood of applications, which will result in construction permits and, eventually, operating stations. These new facilities will result in substantial additional competition for existing broadcasters, particularly the small, local independent stations that are already facing considerable economic pressures from the oligopolies which have resulted from the 1996 Telecommunications Act, and its relaxation of ownership limits. What these stations need least is further erosion of their listener and advertiser base. While it is not the mission of the FCC to guarantee any station financial success, its job is to see that the public interest is served, and local independent stations are those best able to do so, but need economic viability.

The Commission's stated concern for small broadcasters and the difficulties caused by consolidation is laudable, but the real barrier to entry, by minorities and others, is capital. Allotting more and more stations will only make it more difficult for first time broadcasters to access the capital needed to place a station on the air. Lenders and investors need some assurance that those to whom they give money will be able to repay loans and to generate profits.

If a low power radio service proves feasible, special consideration, and first opportunities should be afforded to AM stations, particularly, daytime only stations.

Even a low power station, as an adjunct to the AM station, can help the licensee compete more effectively.

In the event the proposal is adopted, the idea of its being a "new" service with different ownership limits is wishful thinking. While the proposed 100 watt stations (LP 100) may be considered a new service, the proposed 1000 watt service (LP 1000) is nothing more than an additional class of FM service. Just as the Commission created Class B1, C3, C2 and C1 stations as part of an existing service, this proposal creates a Class A1 station. Ironically, the Notice proposes a 500 watt minimum power for LP 1000 stations, while Section 73.211 of the Rules provides a minimum ERP for Class A stations of 100 watts. It is unlikely that this could legitimately be deemed a "new" service.

At least for LP 1000 stations, it is clear that the present ownership limits -- or lack thereof -- would apply. So too would the method for selecting among mutually exclusive applicants.

Assuming that the proposed ownership limits were upheld, and a new broadcaster acquired a group of LP 1000 stations, thus gaining the broadcast experience to assist in attempts to acquire and operate full power stations (Notice, para. 60), what is he to do with the LP 1000 group? He cannot keep them once he acquires a full power station, and cannot sell to any existing full power station owner. Newcomers to the industry are unlikely to have access to the necessary capital to purchase the group and thus permit the licensee to acquire the full power station. Persons with access to this capital will buy the

full power stations rather than the LP 1000 group. The "stepping stone" theory is not workable.

Rather than flood the market with additional stations which will be marginal operations at best, the Commission should limit consolidation and find ways for new entrants to gain access to the capital needed to acquire existing stations or build those that will shortly be auctioned.

In short, Petitioners believe that the proposal contained in the Notice should not be adopted, at least not in its present form or at the present time.

Respectfully submitted,

WGUL-FM, INC.

**AMERICAN ASSOCIATION OF
INDEPENDENT RADIO STATIONS**

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